

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JM GODFREY,
Petitioner,

v.

WARDEN PVSP,
Respondent.

Case No. 20-01381 BLF (PR)

**ORDER DENYING MOTION FOR
RECONSIDERATION**

(Docket No. 22)

Petitioner, a state prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the denial of resentencing under state law. Dkt. No. 1. On June 30, 2020, the Court dismissed the petition or lack of federal habeas jurisdiction. Dkt. No. 19. Petitioner has filed a motion for reconsideration. Dkt. No. 22.

DISCUSSION

A. Standard of Review

Where the court's ruling has resulted in a final judgment or order (e.g., after dismissal or summary judgment motion), a motion for reconsideration may be based either on Rule 59(e) (motion to alter or amend judgment) or Rule 60(b) (motion for relief from judgment) of the Federal Rules of Civil Procedure. *See Am. Ironworks & Erectors v. N.*

1 *Am. Constr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001). The denial of a motion for
2 reconsideration under Rule 59(e) is construed as a denial of relief under Rule 60(b). *See*
3 *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.3 (9th Cir. 1999) (citation omitted) (en
4 banc).

5 Motions for reconsideration should not be frequently made or freely granted; they
6 are not a substitute for appeal or a means of attacking some perceived error of the court.
7 *See Twentieth Century - Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir.
8 1981). “[T]he major grounds that justify reconsideration involve an intervening change of
9 controlling law, the availability of new evidence, or the need to correct a clear error or
10 prevent manifest injustice.” *Pyramid Lake Paiute Tribe of Indians v. Hodel*, 882 F.2d
11 364, 369 n.5 (9th Cir. 1989) (quoting *United States v. Desert Gold Mining Co.*, 433 F.2d
12 713, 715 (9th Cir. 1970)).

13 1. **Rule 59(e)**

14 A motion to alter or amend judgment under Rule 59 must be made no later than
15 twenty-eight days after entry of judgment. *See* Fed. R. Civ. P. 59(e) (effective Dec. 1,
16 2009); *Classic Concepts, Inc. v. Linen Source, Inc.*, 716 F.3d 1282, 1286 (9th Cir. 2013).
17 A motion for reconsideration under Rule 59(e) “‘should not be granted, absent highly
18 unusual circumstances, unless the district court is presented with newly discovered
19 evidence, committed clear error, or if there is an intervening change in the law.’”
20 *McDowell* 197 F.3d at 1255.

21 Petitioner asserts that the Court erred in failing to consider the two cases in his
22 petition: “*US. V. Willis and Sessions v. Demaya*,” asserting that these cases establish that
23 there is an undeniable constitutional question in his case. Dkt. No. 22 at 1, 3. *United*
24 *States v. Willis*, 795 F.3d 986 (2015), involved a challenge to a federal sentence for
25 violating conditions of supervised release based on the charge of felon in possession of a
26 firearm.¹ Contrary to his assertion, the Court finds no reference to “*Sessions v. Demaya*”

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28 ¹ Plaintiff fails to provide a full citation for “*US v. Willis (2015)*,” using it as a citation for
“definition of use of a firearm.” Dkt. No. 1 at 5. A Westlaw search yielded only this case.

1 in the petition. Dkt. No. 1. But even if there were, Petitioner fails to establish the
 2 relevance of *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), which involved a petition for
 3 review in an immigration case challenging the classification of his state convictions as
 4 “crimes of violence” under federal law that was used as a basis for his deportation. The
 5 Court finds no clear error in its dismissal of the petition for lack of federal habeas
 6 jurisdiction because Petitioner’s claims essentially involved the interpretation and
 7 application of state sentencing laws and did not give rise to a federal question. Dkt. No. 19
 8 at 3-4. Petitioner’s reliance on the two cases mentioned above does not change this result.
 9 Accordingly, the motion for reconsideration under Rule 59(e) is **DENIED**.

10 2. **Rule 60(b)**

11 Rule 60(b) lists six grounds for relief from a judgment. Such a motion must be
 12 made within a “reasonable time,” and as to grounds for relief (1) - (3), no later than one
 13 year after the judgment was entered. *See* Fed. R. Civ. P. 60(b). A Rule 60(b) motion does
 14 not affect the finality of a judgment or suspend its operation, *see id.*; therefore, a party is
 15 not relieved of its obligation to comply with the court’s orders simply by filing a Rule
 16 60(b) motion. *See Hook v. Arizona Dep’t of Corrections*, 107 F.3d 1397, 1404 (9th Cir.
 17 1997).

18 Rule 60(b) provides for reconsideration where one or more of the following is
 19 shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered
 20 evidence which by due diligence could not have been discovered in time to move for a new
 21 trial; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been
 22 satisfied; (6) any other reason justifying relief. Fed. R. Civ. P. 60(b); *School Dist. 1J v.*
 23 *ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993). Based on Petitioner’s argument discussed
 24 above, none of these reasons are a basis to justify reconsideration in this case.
 25 Accordingly, the motion for reconsideration under Rule 60(b) is **DENIED**.

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CONCLUSION

For the reasons discussed above, Petitioner's motion for reconsideration, Dkt. No. 22, is DENIED. He may seek an appeal with the Ninth Circuit.

This order terminates Docket No. 22.

IT IS SO ORDERED.

Dated: August 10, 2020


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

Order Denying Motion for Recon.
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